

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD W. JARVI,

Plaintiff,

Civil Case No. 03-71319

-vs-

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

INTERNAL REVENUE SERVICE, ET AL.,

Defendants.

/

**ORDER DENYING PETITIONER'S MOTION: (1)TO PROCEED ON
APPEAL IN FORMA PAUPERIS; AND (2) TO REMAND**

On November 29, 2004, this Court adopted Magistrate Judge Morgan's Report and Recommendation and granted Defendants' Second Motion to Dismiss. On January 7, 2005 Plaintiff filed a timely Notice of Appeal with the United States Court of Appeals for the Sixth Circuit without prepaying the fees and costs. Petitioner has now filed a motion to appeal *in forma pauperis* and for "remand." On April 17, 2005 Defendants filed a response to Plaintiff's Motion arguing that the Court should deny Plaintiff's motion.

Plaintiff relies upon M.C.R. 2.002(c) to proceed *in forma pauperis* which provides:

If a party shows by ex parte affidavit or otherwise that he or she is receiving any form of public assistance, the payment of fees and costs as to that party shall be suspended.

(M.C.R. 2.002(c)).

The Court finds that Plaintiff's request is governed by Federal Rules of Appellate Procedure 24 not the Michigan Court Rules. FED. R. APP. P. 24(a) provides:

(1) Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

(FED. R. APP. P. 24(a)(1)).

Defendant argues that the Court should find that Plaintiff is not entitled to proceed *in forma pauperis* for two reasons. First, Plaintiff has failed to submit any financial information required by FED. R. APP. Appendix, Form 4. Second, Defendant contends that Plaintiff's appeal is not in good faith and is frivolous.

The Court agrees with both arguments presented by Defendant. The Court finds that Plaintiff's *in forma pauperis* request is improperly submitted because no financial information is attached. The Court further finds that Plaintiff's appeal is not in good faith as required by Sixth Circuit precedent and FED. R. APP. 24(a)(3). The Court particularly notes that Plaintiff on at least two prior occasions appealed adverse decisions involving the same facts and legal claims asserted in this action. See *Jarvi v. McCarthy*, 1996 WL 33349364 (Mich. App. 1996), *appeal denied*, 456 Mich. 885 (1997), *cert. denied* 523 U.S. 1061 (1998), *pet. rehear'g denied* 524 U.S. 946 (1991); *Jarvi v. Noble, et al.*, 928 F.2d 1133 (6th Cir. 1991) (unpublished table decision), *cert. denied*, 502 U.S. 913 (1991), *pet. rehear'g denied*, 502 U.S. 1001 (1991). Defendant also states that while preparing for its response, it discovered that Plaintiff filed an identical action against the IRS in the Eastern District of Michigan in 1990. See *Jarvi v. United States*, 1991 U.S. Dist. LEXIS 361 (E.D. Mich. January 3, 1991). Further, Plaintiff attempted to appeal that

dismissal to the Sixth Circuit, and, as in this case, filed a motion to proceed *in forma pauperis* on February 6, 1991. United States District Judge Julian Abele Cook denied this Motion finding that it was not brought in good faith. (See Docket No. 26). Similarly, here, the Court denies Plaintiff's Motion to proceed *in forma pauperis*.

Plaintiff also seeks a remand to the "O.C. Circuit Court." Presumably Plaintiff is referring to the Oakland County Circuit Court. The Court denies this request as there is no legal authority to support Plaintiff's request.

In conclusion, the Court denies Petitioner's Application.

s/ Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: May 13, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on May 13, 2005.

s/Jonie Parker
Case Manager